

Basic Summary of the Current Case

The South Florida Water Management (SFWMD) is implementing a comprehensive long-term plan to restore the Everglades and protect the environment of South Florida. The Everglades Restoration project is the largest ecosystem restoration project, and one of the most complex environmental protection programs, ever conceived.

The case that is now before the United States Supreme Court is designated *South Florida Water Management District vs. Miccosukee Tribe of Indians*. The case focuses on a pumping station – called “the S-9 pump” – in western Broward County, Florida, within the Everglades. The District deeply regrets that the Miccosukee Tribe has made this dispute an impediment to the Everglades Restoration process.

The Case

The Miccosukee Tribe suggests that, under the federal Clean Water Act, SFWMD should be required to obtain a federal National Pollutant Discharge Elimination System (NPDES) permit in order to transfer water from a waterway, called the C-11 basin, to Water Protection Area (WPA) 3A in western Broward county.

Why The Case Has Moved to the Supreme Court

This case focuses on the application of one specific section of the federal Clean Water Act. Lower federal courts have held that an NPDES permit is required for the District to move water in the areas in question. Those lower courts, however, misread the intent of Congress in framing the law, and failed to understand the restrictions that an NPDES permit would place on Everglades Restoration. SFWMD filed a petition for review with the United States Supreme Court, urging the nation’s highest court to correct the lower courts’ error. The Supreme Court agreed with SFWMD that the case is of national importance and should be heard.

What The Case Is About

Today, SFWMD moves water from the C-11 basin to WPA 3A so as to offer flood protection and protect the water supply for the residents of the South Florida region. The Tribe argues that SFWMD is a “polluter” when in fact, SFWMD merely moves water within the Everglades, adding no pollutants to the water. Under the Clean Water Act, Congress intended that an NPDES permit should be required only to regulate those who add pollutants to the water, requiring them to clean the water to the acceptable minimum standard. In this case, SFWMD aims to prevent the misapplication of such a permit to public entities’ water-management activities.

The Pollutants

The water in the C-11 West basin contains relatively low levels of phosphorus – measuring about 20 parts per billion – that largely come from residential and commercial properties within the C-11 basin.

Why The Supreme Court Should Side With SFWMD

SFWMD is not violating any regulatory requirement of the federal Clean Water Act by moving water for beneficial purposes. Since Congress authorized the restoration of the Everglades through its approval of the Comprehensive Everglades Restoration Project (CERP), the courts must decide the true intent of Congress in creating the law.

Managing the level of pollution in Everglades water is the job of the SFWMD and the United States Army Corps of Engineers. Water quality is a part of the Everglades Restoration plan: Approved components of that restoration plan address water quality. Those water-quality standards will be met without an NPDES permit. Moreover, the C-11 West basin and the WPA 3A are both parts of the singular Everglades ecosystem. The NPDES permit process would dramatically slow Everglades Restoration, increasing the restoration costs and prolonging the restoration process by years.

The Everglades will be restored, as directed by Congress through CERP. But the NPDES process would add no environmental benefit and would considerably delay this complex process.

Supporters of SFWMD's Legal Position

Currently more than 4 dozen national and regional groups are now supporting SFWMD's position before the United States Supreme Court. Those supporters of SFWMD are listed on the SFWMD's Amici List. SFWMD anticipates that more supporters will support its position as public awareness of the case increases, and as the severely negative impact of the lower courts' decision is more widely understood.